

4. Legal Environment

This legal environment not only constrains and regulates a firm's operations, but also provides an enabling mechanism through which it is able to pursue its objectives, particularly the achievement of profits through entrepreneurial activity. Like the political and economic environment with which it is intertwined, the legal environment of business is a key influence on the business organization.

Laws relating to both individuals and organizations can be classified in a number of ways: international and national, public and private, criminal and civil.

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***Public law** is the law which concerns the state, whether in international agreements or disputes or in the relationship between the state and the individual. Thus public law consists of international treaties and conventions, constitutional law, administrative law and criminal law.*

***Private law** is law governing the relationships between individuals and comprises laws in respect of contract, tort, property, trusts and the family.*

***Criminal laws** relate to a legal wrong (criminal offence) - a breach of a public duty, punishable by the state on behalf of society. Decisions on whether or not to bring a prosecution in a particular instance are taken by the Crown Prosecution Service (in England and Wales) and the matter may or may not involve trial by jury, according to the seriousness of the alleged offence and the plea of the defendant(s).*

A **tort** is a civil wrong other than a breach of contract or a breach of trust and is a duty fixed by law on all persons (e.g. road users have a duty in law not to act negligently). The law of tort, therefore, is concerned with those situations where the conduct of one party threatens or causes harm to the interests of another party and the aim of the law is to compensate for this harm. The most common torts are negligence, nuisance, defamation and trespass.

A **trust** is generally defined as an 'equitable obligation imposing on one or more persons a duty of dealing with property, over which they have control, for the benefit of other persons who may enforce the obligation'. This property may be in the form of money or stocks and shares or in other types of asset, particularly land, where trusts have become a very common way of permitting persons who are forbidden to own legal estates in land to enjoy the equitable benefits of ownership.

Business must be operated under the rules and regulation of different laws of India. The following is the list of main laws which affect business.

1. Indian contract act 1872
2. Indian sale of goods act 1930
3. Indian partnership act 1932
4. Industrial dispute Act 1947
5. Minimum wages act 1948
6. Indian companies act 1956
7. Foreign exchange regulation act (FERA) 1973
8. Foreign exchange management act 1999
9. Monopolies and restrictive trade practice act 1969

10. Consumer protection act 1986
11. Indian income tax act 1961
12. Central excise act 1944
13. Security exchange board of India act 1992
14. Banking regulation act 1949
15. Chartered accountant act 1949
16. Information technology act 2000
17. Competition act 2002
18. Right to information act 2005
19. Micro, Small and Medium Enterprises Development Act, 2006.
20. Commissions for Protection of Child Rights Act, 2005.

Consumer Protection Act, 2019

1. Application, Commencement and Scope the act

- (1) This Act may be called the Consumer Protection Act, 2019.
- (2) It extends to the whole of India.
- (3) Scope of the Act: The Act applies to all goods and services of any kind other than for commercial purposes provided by any sector - private, public or cooperative. It also covers public utility services.

2. Introduction and Genesis of the act

A consumer is a user of goods and services; therefore, every producer is also a consumer. However, conflicting interests have categorised them, inevitably, into two different groups. The industrial revolution brought in the concept of standardisation and mass production and over the years, the type of goods and the nature of services available grew manifold. The doctrine of 'Caveat Emptor' or 'let the buyer beware' which came into existence in the middle ages had been replaced by the principle of 'Consumer Sovereignty' or 'Consumer is the King'. But, with tremendous increase in the world population, the growing markets were unable to meet the rising demand which created a gap between the general 'demand' and 'supply' levels in the markets. This to some extent watered down the concept of 'Consumer Sovereignty', what with consumers being forced to accept whatever was offered to them. On the other hand, the expanding markets necessitated the introduction of various intermediaries between the producer and the ultimate consumer.

'Advertising' though ostensibly directed at informing potential consumers about the availability and uses of a product began to be resorted to as a medium for exaggerating the uses of one's products or disparaging other products so as to have an edge over competitors. Unfair and deceptive practices such as selling of defective or sub-standard goods, charging exorbitant prices, misrepresenting the efficacy or usefulness of goods, negligence as to safety standards, etc. became rampant. It, therefore, became necessary to evolve statutory measures, even in developed countries, to make producers/traders more accountable to consumers. It also became inevitable for consumers to unite on a common platform to deal with issues of common concern and having their grievances redressed satisfactorily.

Genesis of Consumer Protection Laws

The need to ensure the basic rights to health, safety, etc. of consumers has long been recognised the world over and various general legislations were enacted in India and abroad in this direction. In India, the general enactments other than the law of torts which ultimately aimed at protection of consumers interests are the Indian Contract Act, 1872, the Sale of Goods Act, 1930, the Dangerous Drugs Act, 1930, the Agricultural Produce (Grading and Marketing) Act, 1937, the Drugs and Cosmetics Act, 1940, the Indian Standards Institution (Certification Marks) Act, 1952, the Prevention of Food Adulteration Act, 1954, the Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954, the Essential Commodities Act, 1955, the Standards of Weights and Measures Act, 1976 (Now Legal Metrology Act, 2009), the Trade and Merchandise Marks Act, 1958, (Now Trade Marks Act, 1999), the Patents Act, 1970, the Hire Purchases Act, 1972 and the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980.

These legislations contained regulatory provisions and contravention of these provisions attracted civil liability. This meant that an ordinary consumer had no other remedy but to initiate action by way of a civil suit which involved lengthy legal process proving to be too expensive and time consuming for lay consumers. In fact, at times, the time and cost involved in the legal process was disproportionate to the compensation claimed and granted to an individual consumer. Though the MRTP Commission proved to be far more accessible and less time-consuming than the Civil Courts, its single central location at New Delhi did not make the redressal agency accessible to all consumers, especially those located in the remote towns and villages of the country. Therefore, it became necessary to evolve laws directed at protecting the consumers and at the same time, providing for remedies which are simpler, more accessible, quicker and less expensive.

This paved the way for enactment of the Consumer Protection Act in 1986 providing for simple, quick and easy remedy to consumers under a three-tier quasi-judicial redressal agency at the District, State and National levels. To make the Act more effective and meaningful, necessary changes have been brought by Consumer Protection (Amendment) Act, 2002, which came into force w.e.f. March 15, 2003.

3. Consumer Protection Bill, 2019

Introduction:

The Bill, originally introduced in January 2018 in the last winter session of Parliament, seeks to replace the three-decade-old Consumer Protection Act, 1986, which was amended thrice but is still found wanting in tackling the challenges posed by online transactions, and tele-marketing, multi-level, and digital marketing.



The Consumer Protection Bill, 2019 was introduced in Lok Sabha by the Minister of Consumer Affairs, Food and Public Distribution, Mr. Ram Vilas Paswan on July 8, 2019.

This Bill aims to protect and strengthen the rights of consumers by establishing authorities for timely and effective administration and settlement of consumers' grievances. **The Act received the assent of the President on the 9th August 2019.**

4. Consumer Protection Act, 2019

Objectives of new act

- ease the overall process of consumer grievance redressal system
- a better mechanism to dispose consumer complaints in a speedy manner
- help in disposal of large number of pending cases in consumer courts across the nation

Necessity and key features of the Act

Necessity of new bill

New Act was a long pending legislation and all the recommendations of the Parliamentary Standing Committee were incorporated in the bill except for five recommendations. The pressing need the Act is formulated are as follow :

Consumer markets have undergone huge transformation since the enactment of the Consumer Protection Act in 1986.

- Presence of increasingly complex products and services in the marketplace.
- The emergence of global supply chains rises in international trade and the rapid development of e-commerce.
- New delivery systems for goods and services and have provided new opportunities for consumers.
- Equally, this has rendered the consumer vulnerable to new forms of unfair trade and unethical business practices.
- Misleading advertisements, tele-marketing, multi-level marketing, direct selling and e-tailing pose new challenges to consumer protection and will require appropriate and swift executive interventions to prevent consumer detriment.

Key features of the Bill 2019 Include

- **Definition of Consumer :** A consumer is defined as a person who buys any good or avails a service for a consideration. It does not include a person who obtains a good for resale or a good or service for commercial purpose. It covers transactions through all modes including offline, and online through electronic means, teleshopping, multi-level marketing or direct selling.
- **Rights of Consumers :** Six consumer rights have been defined in the Bill, including the right to: (i) be protected against marketing of goods and services which are hazardous to life and property; (ii) be informed of the quality, quantity, potency, purity, standard and price of goods or services; (iii) be assured of access to a variety of goods or services at competitive prices; and (iv) seek redressal against unfair or restrictive trade practices.
- **Central Consumer Protection Authority :** The central government will set up a Central Consumer Protection Authority (CCPA) to promote, protect and enforce the rights of consumers. It will regulate matters related to violation of consumer rights, unfair trade practices, and misleading advertisements. The CCPA will

have an investigation wing, headed by a Director-General, which may conduct inquiry or investigation into such violations.

- **CCPA will carry out the following functions, including :** (i) inquiring into violations of consumer rights, investigating and launching prosecution at the appropriate forum; (ii) passing orders to recall goods or withdraw services that are hazardous, reimbursement of the price paid, and discontinuation of the unfair trade practices, as defined in the Bill; (iii) issuing directions to the concerned trader/ manufacturer/ endorser/ advertiser/ publisher to either discontinue a false or misleading advertisement, or modify it; (iv) imposing penalties, and; (v) issuing safety notices to consumers against unsafe goods and services.
- **Penalties for misleading advertisement :** The CCPA may impose a penalty on a manufacturer or an endorser of up to Rs 10 lakh and imprisonment for up to two years for a false or misleading advertisement. In case of a subsequent offence, the fine may extend to Rs 50 lakh and imprisonment of up to five years.
- CCPA can also prohibit the endorser of a misleading advertisement from endorsing that product or service for a period of up to one year. For every subsequent offence, the period of prohibition may extend to three years. However, there are certain exceptions when an endorser will not be held liable for such a penalty.
- **Consumer Disputes Redressal Commission :** Consumer Disputes Redressal Commissions (CDRCs) will be set up at the district, state, and national levels. A consumer can file a complaint with CDRCs in relation to: (i) unfair or restrictive trade practices; (ii) defective goods or services; (iii) overcharging or deceptive charging; and (iv) the offering of goods or services for sale which may be hazardous to life and safety. Complaints against an unfair contract can be filed with only the State and National. Appeals from a District CDRC will be heard by the State CDRC. Appeals from the State CDRC will be heard by the National CDRC. Final appeal will lie before the Supreme Court.
- **Jurisdiction of CDRCs :** The District CDRC will entertain complaints where value of goods and services does not exceed Rs one crore. The State CDRC will entertain complaints when the value is more than Rs one crore but does not exceed Rs 10 crore. Complaints with value of goods and services over Rs 10 crore will be entertained by the National CDRC.
- **Product liability :** Product liability means the liability of a product manufacturer, service provider or seller to compensate a consumer for any harm or injury caused by a defective good or deficient service. To claim compensation, a consumer has to prove any one of the conditions for defect or deficiency, as given in the Bill.

5. Comparative Analysis of Old and New Act

CONSUMER PROTECTION ACT 1986	PROVISIONS	CONSUMER PROTECTION ACT 2019
No separate regulator	Regulator	Central Consumer Protection Authority (CCPA) to be formed
Complaint could be filed in a consumer court where the seller's (defendant) office is located	Consumer court	Complaint can be filed in a consumer court where the complainant resides or works
No provision. Consumer could approach a civil court but not consumer court	Product liability	Consumer can seek compensation for harm caused by a product or service
District: up to ₹20 lakh State: ₹20 lakh to ₹1 cr National: above ₹1 cr	Pecuniary jurisdiction	District: up to ₹1 cr State: ₹1 cr to ₹10 cr National: Above ₹10 cr
No provision	E-commerce	All rules of direct selling extended to e-commerce
No legal provision	Mediation cells	Court can refer settlement through mediation

Key Highlights of The New Act

Covers E-Commerce Transactions : The New Act has widened the definition of 'consumer'. The definition now includes any person who buys any goods, whether through offline or online transactions, electronic means, teleshopping, direct selling or multi-level marketing. The earlier Act did not specifically include e-commerce transactions, and this lacuna has been addressed by the New Act.

Enhancement of Pecuniary Jurisdiction : Revised pecuniary limits have been fixed under the New Act. Accordingly, the district forum can now entertain consumer complaints where the value of goods or services paid does not exceed INR 10,000,000 (Indian Rupees Ten Million). The State Commission can entertain disputes where such value exceeds INR 10,000,000 (Indian Rupees Ten Million) but does not exceed INR 100,000,000 (Indian Rupees One Hundred Million), and the National Commission can exercise jurisdiction where such value exceeds INR 100,000,000 (INR One Hundred Million).

E-Filing of Complaints : The New Act provides flexibility to the consumer to file complaints with the jurisdictional consumer forum located at the place of residence or work of the consumer. This is unlike the current practice of filing it at the place of purchase or where the seller has its registered office address. The New Act also contains enabling provisions for consumers to file complaints electronically and for hearing and/or examining parties through videoconferencing. This is aimed to provide procedural ease and reduce inconvenience and harassment for the consumers.

Central Consumer Protection Authority

The New Act proposes the establishment of a regulatory authority known as the Central Consumer Protection Authority (CCPA), with wide powers of enforcement. The CCPA will have an investigation wing, headed by a Director-General, which may conduct inquiry or investigation into consumer law violations.

The CCPA has been granted wide powers to take Suo-moto actions, recall products, order reimbursement of the price of goods/services, cancel licenses and file class action suits, if a consumer complaint affects more than 1 (one) individual.

Product Liability & Penal Consequences : The New Act has introduced the concept of product liability and brings within its scope, the product manufacturer, product service provider and product seller, for any claim for compensation. The term 'product seller' is defined to include a person who is involved in placing the product for a commercial purpose and as such would include e-commerce platforms as well. The defence that e-commerce platforms merely act as 'platforms' or 'aggregators' will not be accepted. There are increased liability risks for manufacturers as compared to product service providers and product sellers, considering that under the New Act, manufacturers will be liable in product liability action even where he proves that he was not negligent or fraudulent in making the express warranty of a product. Certain exceptions have been provided under the New Act from liability claims, such as, that the product seller will not be liable where the product has been misused, altered or modified.

Unfair Trade Practices : The New Act introduces a specific broad definition of Unfair Trade Practices, which also includes sharing of personal information given by the consumer in confidence, unless such disclosure is made in accordance with the provisions of any other law.

Penalties for Misleading Advertisement : The CCPA may impose a penalty of up to INR 1,000,000 (Indian Rupees One Million) on a manufacturer or an endorser, for a false or misleading advertisement. The CCPA may also sentence them to imprisonment for up to 2 (two) years for the same. In case of a subsequent offence, the fine may extend to INR 5,000,000 (Indian Rupees Five Million) and imprisonment of up to 5 (five) years. The CCPA can also prohibit the endorser of a misleading advertisement from endorsing that product or service for a period of up to 1 (one) year. For every subsequent offence, the period of prohibition may extend to 3 (three) years.

The New Act fixes liability on endorsers considering that there have been numerous instances in the recent past where consumers have fallen prey to unfair trade practices under the influence of celebrities acting as brand ambassadors. In such cases, it becomes important for the endorser to take the onus and exercise due diligence to verify the veracity of the claims made in the advertisement to refute liability claims.

Provision for Alternate Dispute Resolution : The New Act provides for mediation as an Alternate Dispute Resolution mechanism, making the process of dispute adjudication simpler and quicker. This will help with the speedier resolution of disputes and reduce pressure on consumer courts, who already have numerous cases pending before them.

“ The goal is to normalize trade relations based on sound science and consumer protection.

7. Rights of Consumers

Rights of Consumers : (Earlier Act)

There was a total of 6 consumer rights which have been defined in the Consumer Protection Bill, and those are:

- **Right to Safety** : A consumer has the right to safety against such goods and services as are hazardous to his health, life and property.
- **Right to be Informed** : A consumer has also the right that he should be provided with all the information based on which he decides to buy goods or services. Such information relates to quality, purity, potency, standard, date of manufacture, method of use, etc. of the commodity. Thus, a producer is required to provide all such information in a proper manner, so the consumer is not cheated.
- **Right to Choose** : A consumer has the absolute right to buy any goods or services of his choice from among the different goods or services available in the market. In other words, no seller can influence his choice in an unfair manner. If any seller does so, it will be deemed as interference in his right to choose.
- **Right to be Heard** : A consumer has the right that his complaint be heard. Under this right, the consumer can file a complaint against all those things which are prejudicial to his interest. First, their rights mentioned above (Right to Safety; Right to be informed and Right to choose) have relevance only if the consumer has the right to file his complaint against them. These days, several large organisations have set up Consumer Service Cells with a view to providing the consumer the right to be heard.
- **Right to Seek Redressal** : This right provides compensation to the consumers against unfair trade practice of the seller. For instance, if the quantity and quality of the product do not conform to those promised by the seller, the buyer has the right to claim compensation.
- **Right to Consumer Education** : Consumer education refers to educating the consumer constantly with regard to their rights. In other words, consumers must be aware of the rights they enjoy against the loss they suffer on account of goods and services purchased by them. Government has taken several measures to educate the consumers.
- For instance, Ministry of Civil Supplies publishes a quarterly magazine under the title "Upbhokta Jagran". Doordarshan telecasts a programme like the "Sanrakshan Upbhokta Ka" and apart from this, Consumer Day is observed on March 15 every year

Additional rights (New Act)

Now in addition to the existing consumer rights, there are five new consumer rights you get as a consumer.

(i) Right to File a Complaint from Anywhere : According to this new right, consumers can now file a complaint with the District Consumer Commission or State Consumer Commission from anywhere, home, office or while on a weekend trip. Presently, the consumers are required

to file a case only at the place where the product was purchased or where the seller of the product has his registered office. The consumer affairs ministry will now frame rules for electronic filing of complaints and specify norms for paying the required fee digitally. This will reduce harassment of consumers to a great extent.

(ii) Right to Seek Compensation under Product Liability : Any complainant can file a case against the manufacturer or seller of a product for any loss caused to the complainant on account of a defective product, which applies to all services. If there is a manufacturing defect or the product in question does not conform to the express warranty the manufacturer or the seller will be held liable. This provision brings e-commerce under its ambit.

(iii) Right to Protect Consumers as a Class : If you have a complaint that relates to violation of consumer rights or unfair trade practices or misleading advertisements that are prejudicial to the interests of consumers as a class, you can do two things. Forward the complaint in writing or in electronic mode to district collector or the commissioner of regional office or the Central Consumer Protection Authority (CCPA) for class action.

(iv) Right to Seek a Hearing using Video Conferencing : According to this, any complaint will be presented before the district commission based on an affidavit and documentary evidence placed before it. If an application has been forwarded by a consumer for hearing through video conference, the commission can allow for this provision.

(v) Right to know why a Complaint was Rejected : No commission can reject a complaint without hearing the complainant. The commission, in fact, must decide about admitting or rejecting a complaint within 21 days, by which if it is not decided then the complaint is deemed as having been admitted.



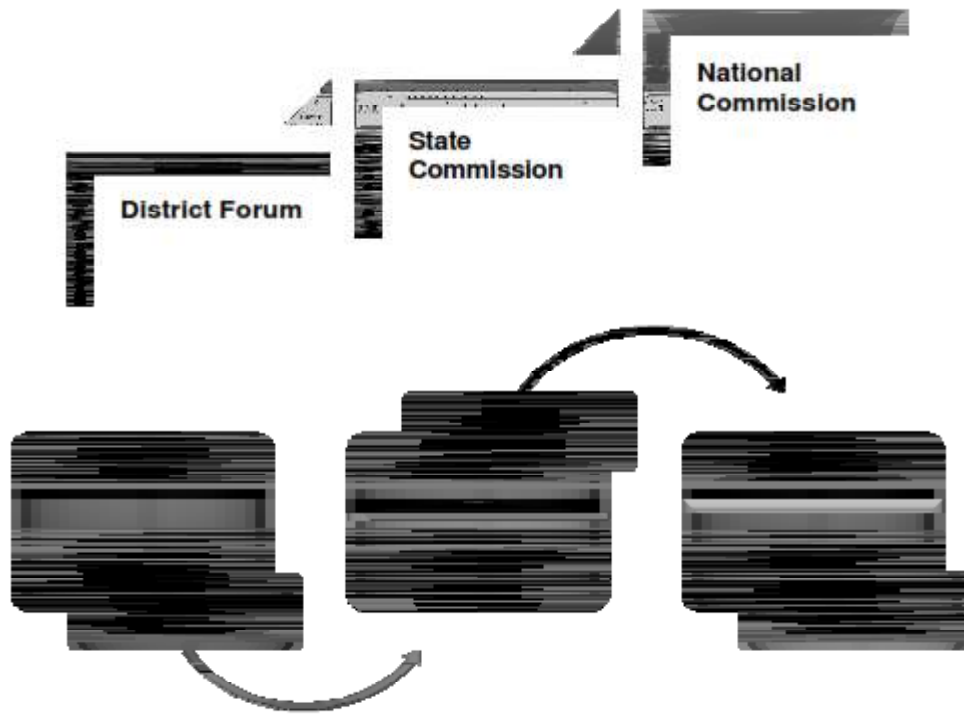
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KNOW ?**

For filing complaint, there is no compulsion to hire a lawyer. The main cost consists of correspondence and traveling to the consumer forum for the hearing.

7. Consumer Dispute Resolution Commission

Redressal Mechanism

The Act provides for a three-tier quasi-judicial redressal machinery at the District, State and National level for redressal of consumer disputes and grievances. **The District Forum has jurisdiction to entertain complaints where the value of goods/services complained against and the compensation, if any claimed, does not exceed 1 Crore, the State Commission for claims exceeding Rs. 1 crore but not exceeding 10 crores; and the National Commission for claims exceeding Rs.10 crores. (earlier these limits were 20 lakhs, 20 lakhs but not exceeding Rs. 1 Crore and exceeding 1 Crore respectively)**



District Forum

Section 28 of the Act provides for the establishment of a District Forum by the State Government in each district of the State. However, the State Government may establish more than one District Forum in a district if it deems fit to do so. District Forum shall consist of:

- (a) Person who is, or who has been, or is qualified to be, a District Judge, who shall be its President;
- (b) Two other members one of whom shall be a woman, who shall have the following qualifications, namely :
 - (i) Be not less than thirty-five years of age,
 - (ii) Possess a bachelor's degree from a recognised university,
 - (iii) Be persons of ability, integrity and standing, and have adequate knowledge and experience of at least ten years in dealing with problems relating to economics, law, commerce, accountancy, industry, public affairs or administration:

Provided that a person shall be disqualified for appointment as a member if he :

- (a) has been convicted and sentenced to imprisonment for an offence, which, in the opinion of the State Government involves moral turpitude; or
- (b) is an undischarged insolvent; or
- (c) is of unsound mind and stands so declared by a competent court; or
- (d) has been removed or dismissed from the service of the Government or a body corporate owned or controlled by the Government; or
- (e) has, in the opinion of the State Government, such financial or other interest as is likely to affect prejudicially the discharge by him of his functions as a member; or
- (f) has such other disqualification as may be prescribed by the State Government.

Every member of the District Forum shall hold office for a term of 5 years or up to the age of 65 years, whichever is earlier, and shall be eligible for reappointment for another term of five years or up to the age of sixty-five years, whichever is earlier, subject to the condition

that he fulfils the qualifications and other conditions for appointment and such re-appointment is also made on the basis of the recommendation of the Selection Committee. A member may resign his office in writing under his hand addressed to the State Government.

Under section 32, any vacancy in the office of the members of the District Commission, the State Government may direct any other District Commission vide notification to exercise the jurisdiction of that particular Commission. The person so designated shall also exercise his/ her respective function of their Commission.

Under section 35, the following persons can file complaints in relation to any good sold or delivered or agreed to be sold or delivered or any service provided or agreed to be provided:

- a. Consumer
- b. Any recognised Consumer association, irrespective of whether the aggrieved party is a member of such group or association.
- c. One or more consumers, when there are multiple consumers with the same interest, with the permission of the District Commission.
- d. Central Government, Central Authority or State Authority.

Jurisdiction of District Forum

Section 11 provides for the jurisdiction of the District Forum under two criteria pecuniary and territorial.

Pecuniary limits

Section 11(1) empowers the District Forum to entertain complaints where the value of goods or services and the compensation, if any, claimed does not exceed rupees twenty lakhs.

Territorial Limits

Section 11(2) requires a complaint to be instituted in the District Forum within the local limits of whose jurisdiction the opposite party or the defendant actually and voluntarily resides or carries on business or has a branch office or personally works for gain, at the time of institution of the complaint; or any one of the opposite parties (where there are more than one) actually and voluntarily resides or carries on business or has a branch office or personally works for gain, at the time of institution of the complaint, provided that the other opposite party/parties acquiesce in such institution or the permission of the Forum is obtained in respect of such opposite parties; or the cause of action arises, wholly or in part.

In the case of Dynavox Electronic Pvt. Ltd. v. B.J.S. Rampuria Jain College, Bikaner (Appeal No. 4/89 before the Rajasthan CDRC), it was held that where in a contract, the machinery was supplied and installed at a particular place, a part of cause of action would be deemed to have arisen at that place, therefore, the complaint could be instituted in the District Forum within whose jurisdiction that place falls.

State Commission

Section 16 of the Act empowers the State Government to establish the State Consumer Disputes Redressal Commission consisting of :

- (a) a person who is or has been a judge of a High Court appointed by the State Government (in consultation with the Chief Justice of the High Court) who shall be its President.
- (b) not less than two and not more than such number of members, as may be prescribed, one of whom shall be a woman, who shall have the following

qualifications, namely:

- (i) be not less than thirty-five years of age,
- (ii) possess a bachelor's degree from a recognised university, and
- (iii) be persons of ability, integrity and standing, and have adequate knowledge and experience of at least ten years in dealing with problems relating to economics, law, commerce, accountancy, industry, public affairs or administration:

It is required that not more than fifty per cent of the members be from amongst persons having a judicial background. "Persons having judicial background" shall mean persons having knowledge and experience for at least a period of ten years as a presiding officer at the district level court or any tribunal at equivalent level.

A person shall be disqualified for appointment as a member if he

- (a) has been convicted and sentenced to imprisonment for an offence, which, in the opinion of the State Government involves moral turpitude; or
- (b) is an undischarged insolvent; or
- (c) is of unsound mind and stands so declared by a competent court; or
- (d) has been removed or dismissed from the service of the Government or a body corporate owned or controlled by the Government; or
- (e) has in the opinion of the State Government, such financial or other interest, as is likely to affect prejudicially the discharge by him of his functions as a member; or
- (f) has such other disqualification as may be prescribed by the State Government.

Every appointment shall be made by the State Government on the recommendation of a Selection Committee consisting of the President of the State Commission, Secretary Law Department of the State and Secretary in charge of Consumer Affairs in the State. The proviso to this clause states that where the President of the State Commission is, by reason of absence or otherwise, unable to act as Chairman of the Selection Committee, the State Government may refer the matter to the Chief Justice of the High Court for nominating a sitting Judge of that High Court to act as Chairman. Section 16(2) empowers the State Government to decide on the salary or honorarium and other allowances payable to the members of the State Commission and the other terms and conditions of service.

Every member of the State Commission shall hold office for a term of five years or upto the age of sixty seven years, whichever is earlier and shall be eligible for reappointment for another term of five years or upto the age of sixty-seven years, whichever is earlier, subject to the condition that he fulfills the qualifications and other conditions for appointment mentioned in Section 16(1)(b) and such re-appointment is made on the basis of the recommendation of the Selection Committee.

Jurisdiction of State Commission

Section 17 of the Act provides for the jurisdiction of the Commission as follows:

- (a) the State Commission can entertain complaints where the value of the goods or services and the compensation, if any claimed exceed rupees twenty lakhs but does not exceed rupees one crore;
- (b) the State Commission also has the jurisdiction to entertain appeals against the orders of any District Forum within the State. However, under second proviso to

Section 15 no appeal by a person, who is required to pay any amount in terms of an order of the District Forum, shall be entertained by the State Commission unless the appellant has deposited in the prescribed manner fifty percent of the amount or rupees twenty-five thousand, whichever is less;

- (c) the State Commission also has the power to call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any District Forum within the State, if it appears to it that such District Forum has exercised any power not vested in it by law or has failed to exercise a power rightfully vested in it by law or has acted illegally or with material irregularity.

A complaint shall be instituted in a State Commission within the limits of whose jurisdiction, -

- (a) the opposite party or each of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides or carries on business or has a branch office or personally works for gain; or
- (b) any of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides, or carries on business or has a branch office or personally works for gain, provided that in such case either the permission of the State Commission is given or the opposite parties who do not reside or carry on business or have a branch office or personally work for gain, as the case may be, acquiesce in such institution; or
- (c) the cause of action, wholly or in part, arises

The State Commission's jurisdiction may be original, appellate or revisional. In respect of (c) above, the State Commission may reverse the orders passed by the District Forum on any question of fact or law or correct any error of fact or of law made by the Forum.

The National Commission in *Indian Airlines v. Consumer Education and Research Society* (1992) CPR 4(NC) held that in respect of the original jurisdiction of the State Commission, Section 17 only prescribes pecuniary limits. No territorial limits have been fixed for the exercise of original jurisdiction under the Act though the provision contained in Section 11(2) of the Act apply mutatis mutandis in the matter of entertaining original complaints by the State Commission. The territorial jurisdiction of the State Commission therefore extends to the territorial limit of the State. In the exercise of its appellate jurisdiction, the State Commission may entertain appeals only against the orders of any District Forum within the State. Similar condition also applies in respect of the State Commissions power to revise orders of the District Forums - only orders of the District Forum within the State may be subject to revision by the State Commission.

Transfer of Cases

Section 17A empowers the State Commission on the application of the complainant or of its own motion to transfer, at any stage of the proceeding any complaint pending before the District Forum to another District Forum within the State if the interest of justice so requires.

National Commission

The Central Government establishes the National Consumer Disputes Redressal Commission, by notification in the Official Gazette. Section 20(1) provides that the National Commission shall consist of-

- (a) a person who is or has been a judge of the Supreme Court, to be appointed by the Central Government (in consultation with the Chief Justice of India), who shall be its President;
- (b) not less than four and not more than such number of members as may be prescribed one of whom shall be a woman, who shall have the following qualifications, namely :
 - (i) be not less than thirty-five years of age;
 - (ii) possess a bachelor's degree from a recognized university; and
 - (iii) be persons of ability, integrity and standing and have adequate knowledge and experience of at least ten years in dealing with problems relating to economics, law, commerce, accountancy, industry, public affairs or administration:

Provided that not more than fifty percent of the members shall be from amongst the persons having judicial background. "Persons having judicial background" shall mean persons having knowledge and experience for at least a period of ten years as a presiding officer at the district level court or any tribunal at equivalent level:

A person shall be disqualified for appointment if he :

- (a) has been convicted and sentenced to imprisonment for an offence, which, in the opinion of the Central Government involves moral turpitude; or
- (b) is an undischarged insolvent; or
- (c) is of unsound mind and stands so declared by a competent court; or
- (d) has been removed or dismissed from the service of the Government or a body corporate owned or controlled by the Government; or
- (e) has in the opinion of the Central Government such financial or other interest as is likely to affect prejudicially the discharge by him of his functions as a member; or
- (f) has such other disqualification as may be prescribed by the Central Government.

Every appointment by the Central Government is required to be made on the recommendation of a Selection Committee consisting of a Judge of the Supreme Court to be nominated by the Chief Justice of India, the Secretary in the Department of Legal Affairs and the Secretary in charge of Consumer Affairs in the Government of India. Section 20(2) empowers the Central Government to fix the salary/ honorarium and other allowances payable to the members as well as the other terms and conditions of their service. Every member of the National Commission shall hold office for a term of five years or up to seventy years of age, whichever is earlier and shall be eligible for reappointment for another term of five years or upto the age of seventy years, whichever is earlier, subject to the condition that he fulfills the qualifications and other conditions for appointment mentioned in Section 20(1)(b) and such re-appointment is made on the basis of the recommendation of the Selection Committee.

Any person, aggrieved by an order made by the National Commission in exercise of its powers conferred by sub-clause (i) or (ii) of clause (a) of sub-section (1) of section 58, may prefer an appeal against such order to the Supreme Court within a period of thirty days from the date of the order: Provided that the Supreme Court may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not filing it within that period: Provided further that no appeal by a person who is required to pay any amount in terms of an order of the National Commission shall be entertained by the Supreme Court unless that person has deposited fifty per cent. of that amount in the manner as may be prescribed.



**DID YOU
KNOW ?**

A written complaint to the company is taken as proof that it has been informed.

Jurisdiction of National Commission

Section 21 provides that the National Commission shall have jurisdiction:

- (a) to entertain complaints where the value of the goods or services and the compensation, if any, claimed exceeds rupees one crore;
- (b) to entertain appeals against the orders of any State Commission. However, under second proviso to Section 19 no appeal by a person, who is required to pay any amount in terms of an order of the State Commission, shall be entertained by the National Commission unless the appellant has deposited in the prescribed manner fifty percent of the amount or rupees thirty-five thousands, whichever is less; and
- (c) to call for the records and pass appropriate orders in any consumer dispute which is pending before, or has been decided by any State Commission where it appears to the National Commission that such State Commission has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity.

Complaints before the District Forum and State Commission

Section 12 provides that a complaint, in relation to any goods sold or delivered or agreed to be sold or delivered or any service provided or agreed to be provided may be filed with the District Forum by :

- (a) The consumer to whom such goods are sold or delivered or agreed to be sold or delivered or such service provided or agreed to be provided;
- (b) Any recognised consumer association, whether the consumer to whom the goods sold or delivered or agreed to be sold or delivered or service provided or agreed to be provided, is a member of such association or not; or
- (c) One or more consumers, where there are numerous consumers having the same interest with the permission of the District Forum, on behalf of, or for the benefit of, all consumers so interested; or
- (d) The Central or the State Government as the case may be, either in its individual capacity or as a representative of interests of the consumers in general.

Every complaint filed under this section is required to be accompanied with such amount of fee and payable in such manner as may be prescribed. On receipt of a complaint, the District Forum may, by order, allow the complaint to be proceeded with or rejected. However, a complaint shall not be rejected unless an opportunity of being heard has been given to the complainant. It is also to be noted that the admissibility of the complaint shall ordinarily be decided within twenty-one days from the date on which the complaint was received. Where a complaint is allowed to be proceeded, the District Forum may proceed with the complaint in the manner provided under this Act. Where a complaint has been admitted by the District Forum, it shall not be transferred to any other court or tribunal or any authority set up by or under any other law for the time being in force.

The explanation defines the term 'recognised consumer association' as to mean any voluntary consumer association registered under the Companies Act, 1956 or any other law for the time being in force.

Thus, in case the affected consumer is unable to file the complaint due to ignorance, illiteracy or poverty, any recognised consumer association may file the complaint. The rule of 'privity of contract' or locus standi which permits only the aggrieved party to take action has very rightly been set aside in the spirit of public interest litigation. Section 13 states the procedure to be followed by the District Forum or the State Commission on receipt of a complaint. On receipt of a complaint, a copy of the complaint is to be referred to the opposite party (or each of the opposite parties, where there are more than one) within twenty-one days from the date of its admission, directing him to give his version of the case within a period of 30 days. This period may be extended by another period of 15 days. If the opposite party admits the allegations contained in the complaint, the complaint will be decided on the basis of materials on the record. Where the opposite party denies or disputes the allegations contained in the complaint, or omits or fails to take any action to represent his case within the stipulated time, the dispute will be settled in the following manner:

(i) In case of Dispute Relating to Any Goods : Where the complaint alleges a defect in the goods which cannot be determined without proper analysis or test of the goods, a sample of the goods shall be obtained from the complainant, sealed and authenticated in the prescribed manner, for referring to the appropriate laboratory for the purpose of any analysis or test whichever may be necessary, so as to find out whether such goods suffer from any such defect. The 'appropriate laboratory' would be required to report its finding to the referring authority, i.e. the District Forum or the State Commission within a period of forty-five days from the receipt of the reference or within such extended period as may be granted by these agencies [Section 13(1)(c)].

The term 'Appropriate laboratory' has been defined to mean a laboratory or organisation recognised by the Central Government or a State Government, subject to such guidelines as may be prescribed by the Central Government in this behalf; or any such laboratory or organisation established by or under any law for the time being in force, which is maintained, financed or aided by the Central Government or a State Government for carrying out analysis or test of any goods with a view to determining whether such goods suffer from any defect.

Section 13 empowers the District Forum/State Commission to require the complainant to deposit such amount as may be specified, towards payment of fees to the 'appropriate laboratory for the purpose of carrying out the necessary analysis or tests. The amount so deposited shall be remitted to the appropriate laboratory to enable it to carry out the analysis

and send the report. On receipt of the report, a copy thereof is to be sent by District Forum/ State Commission to the opposite party along with its own remarks. In case any of the parties i.e. opposite party or the complainant, disputes the correctness of the methods of analysis/ test adopted by the appropriate laboratory, the concerned party will be required to submit his objections in writing in regard to the report.

After giving both the parties a reasonable opportunity of being heard and to present their objections, if any, the District Forum/State Commission shall pass appropriate orders under Section 14 of the Act.

(ii) In case of dispute relating to goods not requiring testing or analysis or relating to services Section 13(2)(b) provides that where the opposite party denies or disputes the allegations contained in the complaint within the time given by the District/State Commission, the Agency concerned shall dispose of the complaint on the basis of evidence tendered by the parties. In case of failure by the opposite party to represent his case within the prescribed time, the complaint shall be disposed of on the basis of evidence tendered by the complainant.

Limitation Period for Filing of Complaint

Section 24A provides that the District Forum, the State Commission, or the National Commission shall not admit a complaint unless it is filed within two years from the date on which the cause of action has arisen.

However, where the complainant satisfies the Forum/Commission as the case may be, that he had sufficient cause for not filing the complaint within two years, such complaint may be entertained by it after recording the reasons for condoning the delay.

Administrative Control

Section 24B authorises the National Commission to exercise administrative control over the State Commissions in the matter of calling for periodical returns regarding the institution, pendency and disposal of cases, issuance of instructions regarding adopting of uniform procedure in hearing of matters, serving copies of documents, translation of judgements etc. and generally overseeing the functioning of the State Commission/District forum to ensure that the objects and purposes of the Act are served in the best possible manner.

Similarly, the State Commission has been authorised to exercise administrative control over all the District forum within its jurisdiction in all the above matters.

Powers of the Redressal Agencies

The District Forum, State Commission and the National Commission have been vested with the powers of a civil court under the Code of Civil Procedure, 1908 while trying a suit in respect of the following matters :

- (i) the summoning and enforcing attendance of any defendant or witness and examining the witness on oath;
- (ii) the discovery and production of any document or other material object producible as evidence;
- (iii) the reception of evidence on affidavits;
- (iv) the requisitioning of the report of the concerned analysis or test from the appropriate laboratory or from any other relevant source;
- (v) issuing of any commission for the examination of any witness; and
- (vi) any other matter which may be prescribed.

In the case of *Union Carbide Corporation Vs. Union of India*, It has also been held that section 9 of the Code of Civil Procedure, which enables a Civil Court to try all suits of a civil nature, impliedly confers jurisdiction to apply the law of Torts as principles of justice, equity and good conscience.

Under the Consumer Protection Rules, 1987, the District Forum, the State Commission and the National Commission have the power to require any person:

- (i) to produce before and allow to be examined by an officer of any of these agencies, such books of accounts, documents or commodities as may be required and to keep such book, documents etc. under his custody for the purposes of the Act;
- (ii) to furnish such information which may be required for the purposes of the Act to any officer so specified.

These redressal agencies have also been empowered to pass written orders authorising any officer to exercise the power of entry and search of any premises where the books, papers, commodities or documents are kept if there is any ground to believe that these may be destroyed, mutilated, altered, falsified or secreted. Such authorised officer may also seize books, papers, documents or commodities if they are required for the purposes of the Act, provided the seizure is communicated to the District Forum/State Commission/National Commission within 72 hours. On examination of such documents or commodities, the agency concerned may order the retention thereof or may return it to the party concerned.

The District forum, the State Commission and the National Commission have the power to issue remedial orders to the opposite party directing him to do any one or more of the things referred to in Section 14(1)(a) to

Complaints to be Registered	
District Consumer Forum	for a claim of compensation up to Rs. 1 Crore
State Commission	for a claim of compensation between 1 crore and 10 crores
National Commission	for a claim of compensation above Rs.10 crore

Foreign Exchange Regulation Act (FERA) 1973

The Foreign Exchange Regulation Act (FERA) is legislation that was passed by the Indian Parliament in 1973 and came into effect as of January 1, 1974. FERA applied to all citizens of India, all over India. Regulated in India by the Foreign Exchange Regulation Act (FERA), 1973.

Features

- Consisted of 81 sections.
- FERA Emphasized strict exchange control.
- Control everything that was specified, relating to foreign exchange.
- Law violators were treated as criminal offenders
- Aimed at minimizing dealings in foreign exchange and foreign securities.

Objectives

- To regulate certain payments.
- To regulate dealings in foreign exchange and securities

- To regulate transactions, indirectly affecting foreign exchange.
- To regulate the import and export of currency
- To conserve precious foreign exchange.
- The proper utilization of foreign exchange so as to promote the economic development of the country.

Foreign Exchange Management Act (FEMA) 1999

The Foreign Exchange Regulation Act of 1973 (FERA) in India was repealed on 1st June, 2000. It was replaced by the Foreign Exchange Management Act (FEMA) which was passed in Parliament at 1999. FEMA extends to the whole of India. The Act has assigned an important role to the Reserve Bank of India (RBI) in the administration of FEMA.

FEMA does not apply to citizen of India who are outside India so the scope of FEMA Act has been further extended to include branches, office and agencies outside India. The word "**owned or Controlled**" make emphasis wide and enough. It applies to all branches, offices and agencies outside India owned or controlled by a person who is a resident of India and also to any contravention there under committed outside India by any person to whom this Act applies.

The FEMA head-office, also known as **Enforcement Directorate (E.D.)** is situated in New Delhi and is headed by a Director. Foreign Exchange Act is very important for India for it to be a proper trading and keeps a healthy relation with the outside world as well.

FEMA has brought a new management regime of Foreign Exchange consistent with the emerging frame work of the World Trade Organization (WTO). It is another matter that enactment of FEMA also brought with it Prevention of Money Laundering Act, 2002 which came into effect from 1st July, 2005 and the heat of which is yet to be felt as "Enforcement Directorate" would be investigating the cases under PMLA too.

Objectives of FEMA

- *FEMA are to facilitate external trade and payments and to promote the orderly development and maintenance of foreign exchange market.*
- *FEMA is to facilitate external trade and payments and for promoting the orderly development and maintenance of foreign exchange market in India.*
- *FEMA deals with provisions relating to procedures, formalities, dealings, etc. of foreign exchange transactions in India.*
- *The transactions relating to foreign exchange have been classified under FEMA into two main categories, viz., (1) Current Account Transaction, (2) Capital Account Transaction.*

Capital Account Transaction

A transaction which alerts the assets and liabilities including contingent liabilities outside India of person resident in India or assets or liabilities in India of person resident outside India would be Capital Account transactions.

The Reserve Bank of India may place restrictions on various specified transactions deemed to be considered as capital in Nature.

Current Account Transaction

Current Account means a transaction other than capital account transaction. In other word the current account basically relating profit and Loss Account is called current account transactions.

Major Provisions of FEMA Act 1999

- FEMA is more concerned with the management rather than regulations or control.
- Directorate of enforcement
- Any person can sell or withdraw foreign exchange, without any prior permission from RBI and then can inform RBI later.
- FEMA is regulatory mechanism that enables RBI and Central Government to pass regulations and rules relating to foreign exchange in tune with foreign trade policy of India.
- RBI controls over capital account transactions.
- Dealing in foreign exchange through authorized persons like authorized dealer or money changer etc.
- FEMA recognized the possibility of Capital Account convertibility.
- Free transactions on current account subject to reasonable restrictions that may be imposed.
- The violation of FEMA is a civil offence.

Applicability of FEMA Act

- Foreign exchange
- Foreign security
- Any overseas company that is owned 60% or more by an NRI (Non Resident Indian)
- Any citizen of India, residing in the country or outside (NRI) who stay 182 days or More in India
- Exports of any foods and services from India to outside, foreign currency, that is any currency other than Indian currency
- Imports of goods and services from outside India to India,
- securities as defined in Public Debt Act 1994,
- Banking, financial and insurance services,
- Sale, purchase and exchange of any kind (i.e. Transfer)

Authorized Person

Section 2(c) of Foreign Exchange Management Act or FEMA states that 'authorized person' means an authorized dealer, money changer, off-shore banking unit or any other person authorized under section 10 (1) to deal in foreign exchange and foreign securities.

FEMA permits only authorized person to deal in foreign exchange or foreign security. Such an authorized person, under the Act, means authorized dealer, money changer, off-shore banking unit or any other person for the time being authorized by Reserve Bank. The Act thus prohibits any person who :

- Deal in or transfer any foreign exchange or foreign security to any person not being an authorized person;

- Make any payment to or for the credit of any person resident outside India in any manner;
- Receive otherwise through an authorized person, any payment by order or on behalf of any person resident outside India in any manner
- Enter into any financial transaction in India as consideration for or in association with acquisition or creation or transfer of a right to acquire, any asset outside India by any person is resident in India which acquires, hold, own, possess or transfer any foreign exchange, foreign security or any immovable property situated outside India.

The Reserve Bank can, by regulations, prohibit, restrict or regulate the following transfer or issue of any foreign security by a person resident in India.

- Transfer or issue of any security by a person resident outside India;
- Transfer or issue of any security or foreign security by any branch, office or agency in India of a person resident outside India;
- Any borrowing or lending in foreign exchange in whatever form or by whatever name called;
- Any borrowing or tending in rupees in whatever form or by whatever name called between a person resident in India and a person resident outside India;
- Deposits between persons resident in India and persons resident outside India;
- Export, import or holding of currency or currency notes;
- Transfer of immovable property outside India, other than a lease not exceeding five years, by a person resident in India;
- Acquisition or transfer of immovable property in India, other than a lease not exceeding five years, by a person resident outside India; giving of a guarantee or surety in respect of any debt, obligation or other liability incurred
 - (i) By a person resident in India and owed to a person resident outside India.
 - (ii) By a person resident outside India.

A person, resident in India may hold, own, transfer or invest in foreign currency, foreign security or any immovable property situated outside India if such currency, security or property was acquired, held or owned by such person when he was resident outside India or inherited from a person who was resident outside India.

Distinguish FERA and FEMA ACT

Any offense under FERA was a criminal offense liable to imprisonment, whereas FEMA seeks to make offenses relating to foreign exchange civil offenses.

FERA, 1973	FEMA, 1999
It is an old enactment. It was passed in 1973. Now this Act has been repealed.	It is a new enactment. It was passed in the year 1999.
It was a long enactment with 81 sections. It was very strict in nature.	It is a small enactment with 49 sections. It is liberal in nature.
Approach towards foreign exchange transactions was very conservative and restrictive.	The approach towards foreign exchange transaction is very positive and welcoming.
Penalty provisions were very hard. In this Act, imprisonment was imparted to the person violating its provisions.	It provides only for monetary penalty for violating the provisions. Imprisonment is imparted only on non-payment of monetary penalty.
The scope of FERA was very wide. It dealt with all the transactions related to foreign exchange, i.e. anything and everything related to foreign exchange was controlled by FERA.	The scope of FEMA is narrow. It deals only with specified transactions related to foreign exchange, i.e., it check and controls only those transaction, which are specifically mentioned in the Act. It does not deal with the transactions which are not specifically mentioned in its scope.

Ques. Which one is not an element of legal environment ? (NTA UGC-NET June 2012 P-II)

- (A) Act of Parliamentarians in Lok Sabha
- (B) Indian Contract Act, 1872
- (C) Indian Partnership Act, 1932
- (D) Negotiable instruments Act, 1881

Ans. (A) Act of Parliamentarians in Lok Sabha is not an element of legal environment.

Ques. Match the following : (NTA UGC-NET June 2012 P-III)

List-I : (Year)

- (a) 1956
- (b) 1986
- (c) 1992
- (d) 2002

List-II : (Act)

- (i) Consumer Protection Act
- (ii) Indian Companies Act
- (iii) Securities and Exchange Board of India
- (iv) Securitization Act

Codes :

- | | (a) | (b) | (c) | (d) |
|-----|------|-------|-------|------|
| (A) | (ii) | (i) | (iii) | (iv) |
| (B) | (i) | (ii) | (iii) | (iv) |
| (C) | (ii) | (iii) | (i) | (iv) |
| (D) | (i) | (iv) | (iii) | (ii) |

Ans. (A) (ii) (i) (iii) (iv)

Ques. Match the items of List-I with the items of List-II.

(NTA UGC-NET Dec. 2012 P-III)

List-I		List-II	
(a)	FEMA	(i)	1986
(b)	Indian Factories Act	(ii)	1999
(c)	Industrial Dispute Act	(iii)	1948
(d)	Consumer Protection Act	(iv)	1947

Codes :

	(a)	(b)	(c)	(d)
(A)	(iv)	(ii)	(iii)	(i)
(B)	(iii)	(i)	(ii)	(iv)
(C)	(ii)	(iii)	(iv)	(i)
(D)	(i)	(iv)	(iii)	(ii)

Ans. (C) (ii) (iii) (iv) (i)

Ques. Indicate the ground on which a complaint under the Consumer Protection Act, 1986, shall be invalid.

(NTA UGC-NET June 2013 P-III)

- (A) A product having short weight.
- (B) A service provided free of cost.
- (C) A misleading advertisement given in newspaper.
- (D) None of the above.

Ans. (B) A service provided free of cost shall be invalid under the Consumer Protection Act, 1986.

Ques. The time limit for filing a complaints before the District forum under the Consumer Protection Act, 1986 is

(NTA UGC-NET June 2014 P-III)

- (A) one year
- (B) two years
- (C) three years
- (D) There is no such time limit

Ans. (B) Section 24A provides period within which the complaint must be filed before the Consumer Forum. This Section 24A, a new provision has been inserted by the Consumer Protection (Amendment) Act, 1993, w.e.f. 18-6-93.

S. 24A provides:

The District Forum, the State Commission or the National Commission shall not admit a complaint unless it is filed within two years from the date on which the cause of action has arisen.